

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, April 8, 2009, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Ray Dwyer
Robert Bartholomew
Tom Day
Nancy Bonniwell
Rob Schuett

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Peggy Tilley, Waukesha County Senior Land Use Specialist
Claire Cucinello, BA09:010, neighbor
Penelope Charlson, BA09:009, owner
David Hoffman, BA09:010, designer
Scott L. Stacey, BA09:010, owner
Diane Stacey, BA09:010, owner
Mary Jo Lange, BA09:010, representing neighbor
Terry Leaman, BA09:010 neighbor
Brad Dagen, BA09:010, attorney for neighbor
Bob Sokolowicz, BA09:010, neighbor
Richard Froce, BA09:009, builder
M. Menzel
Linda M. Weber

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I make a motion to approve the Summary of the Meeting of March 11, 2009.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes. Mr. Dwyer abstained.

NEW BUSINESS:

BA09:008 JEFF WOOD (OWNER) JOSEPH SCHERWENKA (AGENT):

(Public hearing adjourned from March 11, 2009).

The application for a variance was formally withdrawn by the petitioner on April 6, 2009. Therefore, no action was taken by the Board on this matter.

BA09:009 PENELOPE CHARLSON:

Mr. Bartholomew

*I make a motion to **deny** the request for a variance from the floor area ratio requirements of the Ordinance but **approve** the request for variances from the road setback, conservancy and floodplain setback requirements of the Ordinance, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report with the following modifications to the conditions:*

Condition No. 20 shall be eliminated as it is a duplicate of condition No. 14 and a condition shall be added that reads as follows: Prior to the issuance of a Zoning Permit, a Certified Survey Map combining Lots 20, 21 and 22, of Douglas Addition, must be approved by the Town of Summit and Waukesha County and recorded in the Waukesha County Register of Deeds Office.

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the floor area ratio requirements of the Shoreland and Floodland Protection Ordinance but **approval** of the request for variances from the road setback, conservancy and floodplain setback requirements of the Shoreland and Floodland Protection Ordinance to allow the construction of a new single-family residence on the property, subject to the following conditions:

1. The proposed residence must comply with the offset and shore setback requirements of the Ordinance and must be located a minimum of 15 ft. from the established road right-of-way of Douglas Drive.
2. A wetland delineation of all wetlands on the site must be field staked. The wetland delineation must be approved by the Wisconsin Department of Natural Resources or must be completed by a Wisconsin Department of Natural Resources (WDNR) assured delineator. The approved wetland boundary shall be surveyed by a registered land surveyor. The wetland delineation and a survey showing the approved wetland boundary must be submitted to the Planning and Zoning Division staff.
3. The proposed residence must be located a minimum of 30 ft. from the wetland boundary. If the wetland determination is such that a 30 ft. setback is not possible, the matter shall be brought back before the Board of Adjustment for reconsideration.
4. Prior to the issuance of a Zoning Permit, the shed on the lakeside of the existing residence must be removed and the area restored with vegetation.
5. The footprint of the structure shall not exceed 2,100 sq. ft. as proposed. This shall consist of a minimum 850 sq. ft. first floor and a minimum 400 sq. ft. attached garage. All covered

decks, patios, covered porches and entryways shall be included in the total footprint.

6. The total floor area ratio on the property shall not exceed 15%. Any covered decks, patios, porches, etc., shall be included when calculating floor area ratio.
7. The residence and attached garage and all other appurtenances must not exceed two stories, as viewed from the lake and the road. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
8. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff. The private sewage system and private well shall be floodproofed to the flood protection elevation pursuant to Section 8(c) of the Ordinance and shall conform with the provisions of the Waukesha County Code of Ordinances and Wisconsin Administrative Codes where applicable to such facilities.
9. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all proposed structures (including decks, patios, and walkways) in conformance with all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division Staff for review and approval.
10. Prior to the issuance of a Zoning Permit, the final construction plans for the residence and attached garage, in conformance with all conditions, must be submitted to Planning and Zoning Staff for review and approval.
11. The elevation of the lowest floor of the residence including the attached garage, excluding those basements or crawlspaces that are 5 ft. or less in height, shall be placed at or above the flood protection elevation and reconstruction may only occur on the same foundation or newly construction foundation which represents no greater an encroachment or extension of the previously existing structure other than vertically. Said foundation shall be floodproofed and certified as set forth herein. Note: The Flood protection elevation is defined as the elevation corresponding to two (2) feet of freeboard above the floodplain. Basements or crawlspaces that are 5 ft. or less in height must comply with Condition No. 13 below.
12. Fill shall be used to elevate the lowest floor, excluding those basements or crawlspaces, 5 ft. or less in height, so as to meet the above. The fill surrounding the structure shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. The fill shall not negatively alter floodwater conveyance or increase flood heights. Where such distance cannot be achieved because of lot lines, elevations of existing streets or sewer lines, flood impacts, or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be floodproofed to the flood protection

elevation in accordance with the methods set forth herein and shall be certified as such by an architect or professional engineer registered in the State of Wisconsin and be authorized by the WDNR. Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All floodproofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the floodproofing measures are adequately designed to protect the property to the flood protection elevation for the subject area.

13. If the structure has a basement or a crawl space which is 5 ft. in height or less and which is not useable as living area, the surface of the floor of the basement or crawlspace shall be at or above the regional flood elevation. Heating, ventilation, air conditioning, electrical and gas equipment shall be at or above the flood protection elevation. In any case, the basement or crawlspace shall be floodproofed in accordance with section 8(c) of the Ordinance to the flood protection elevation so that floodwater cannot enter directly over the ground surface into such basement and crawlspace.
14. In addition to the lowest floor elevation and fill requirements of this ordinance, any structure must meet the floodproofing standards set forth in Section 8(c) of the Ordinance.
15. There shall be contiguous dry land access to the proposed structure. Dry land access is considered a vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles. In developments where existing street or sewer line elevations make compliance with this requirement impractical, a permit may be issued where access roads are at or below the regional flood elevation, if the municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure by wheeled vehicles during a regional flood event; or the municipality has a natural disaster plan approved by Wisconsin Emergency Management and the WDNR.
16. No change in the existing topography or drainage courses on any land will be allowed, which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. Further, no fill or alterations will be permitted under any circumstances, which will alter the drainage or topography in a way that will adversely affect the surrounding lands.
17. The structure must meet all of the minimum requirements under applicable FEMA regulations (44 CFR part 60), or the regulations promulgated thereunder.
18. The structure shall not have a High Flood Damage Potential (i.e. damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure and its contents).

19. The construction shall not impede drainage, obstruct flood flows (i.e. development which blocks the conveyance of floodwaters by itself or with other development), reduce the flood water storage capacity of the floodland or result in an increased regional flood elevation. Compensatory storage is required for all areas of authorized fill on a minimum of a one to one basis, which equals 100% replacement of any lost floodplain storage capacity. Excavation below the groundwater table is not considered to provide an equal volume of storage. Compensation must be provided in a manner which is not deleterious to other property or the quality of any wetlands. The area of compensatory floodplain storage shall be in close proximity to fill activity and shall not result in an increase in floodplain elevations on upstream or downstream properties. The applicant shall provide the following data to determine the effects of the proposal according to these standards: A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or an analysis calculating the effects of this proposal on regional flood height. These standards state that the submitted plans and calculations must demonstrate that the proposed fill of the floodplain does not impede drainage, obstruct flows, or reduce the floodwater storage capacity of the floodland. This analysis must be performed and certified by a Professional Engineer licensed in the State of Wisconsin.
20. In addition to the lowest floor elevation and fill requirements of this ordinance, any structure must meet the floodproofing standards set forth in Section 8(c) of the Ordinance.
21. Upon completion, the applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that floodproofing measures meet the requirements of Section 8(c) of the Ordinance. A copy of that certification must be submitted to the Town of Summit Building Inspector and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff, prior to proceeding with construction.
22. Upon completion of the foundations of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions.
23. The fill area and the fill around the residence shall be in accordance with the final Grading Plan, to be approved by the Town Engineer and in accordance with the standards of FEMA Technical Bulletin No.10.
24. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also

be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This Grading Plan may be combined with the Plat of Survey required in Condition No. 9.

25. Upon completion of the project, an “As-Built” Grading Plan, showing the finished grades on the property must be prepared by a registered land surveyor and submitted to the Town Engineer and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff. If that “as-built” Grading Plan indicates that the property has not been filled in accordance with the approved Grading Plan, the petitioners shall make whatever changes are necessary to bring the property into conformance with the approved Grading Plan. The final plans and fill and floor elevations shall be submitted to FEMA to obtain LOMR-F certification if flood insurance is to be avoided.
26. Floodplain Certificate of Compliance: No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a Floodplain Certificate of Compliance is issued by the Zoning Administrator. The Floodplain Certificate of Compliance shall show that the building or premises or part thereof, and the proposed use, conform to the floodplain provisions of this ordinance. If all provisions are met, the Floodplain Certificate of Compliance shall be issued within 10 days after written notification that the permitted work was completed. The Zoning Administrator shall issue the Floodplain Certificate of Compliance to the Town Building Inspector and a copy of the Floodplain Certificate of Compliance to the applicant.
27. Notwithstanding the above, compliance with any other provisions or requirements of the Waukesha County Shoreland and Floodland Protection Ordinance is required.

The conditional approval of this request will allow the replacement of a severely flood damaged residence and detached garage with the construction of a new residence and attached garage that is appropriately sized for the lot and the particular lot conditions. The entire property is located within the estimated 100-year floodplain of Lower Genesee Lake and there is no conforming location on the lot on which a structure could be constructed without the need for variances. The Ordinance provides that a variance granted on a property located in the floodplain shall meet the following criteria in addition to the three tests for the granting of a variance:

- a. May not cause any increase in the regional flood elevation.
- b. May not increase the amount of obstruction to flood flows.
- c. The variance shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the Ordinance.
- d. The floodproofing measures and EFD Existing Floodplain Development Overlay District standards required in the Ordinance, NR 116, of the Wisconsin Administrative Code, and FEMA regulations must be met.

As conditioned, the applicant will be responsible for proving that these measures are satisfied prior to the issuance of a Zoning Permit for the construction of the residence.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

As stated above, the property is located entirely below the estimated floodplain elevation of Lower Genesee Lake (870.0 above mean sea level (amsl). It is important to note that the floodplain elevation for Lower Genesee Lake is unstudied at this time. However, the C-1 (EFD) District requires that the first floor of all structures must be floodproofed to the flood protection elevation (2 ft. above the floodplain). Although the floodplain is unstudied for this lake, updated FEMA mapping indicates that the floodplain elevation is approximately 868.0-870.0 amsl. In addition, survey information taken by Waukesha County after the 2008 floods indicates that the flood elevation in June of 2008 was 869.5, and a preliminary flood study done by Welch Hansen dated April 6, 1978 placed the flood elevation at 869.6. Therefore, the County Zoning Administrator has determined that it is a reasonable assumption to regulate the floodplain of Lower Genesee Lake as 870.0 amsl.

This approval, as conditioned, will result in 2,775 sq. ft. of living and storage space. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It should be noted that the resultant footprint of the structures on the site will be approximately 500 sq. ft. less than the current footprint of the structures.

The property is located at the terminus of a dead end road, Douglas Drive. The granting of a variance to allow some relief from the road setback requirements of the Ordinance is reasonable in order to encourage the construction of the residence further from the lake and to provide a structure protected from future flooding activity. The buildable area on the site is limited due to the road setback, conservancy/wetland setback, and the shore setback. As conditioned, a reasonable amount of relief has been provided to allow for the construction of a new residence that will be appropriately sized for the lot while minimizing the impact on the floodplain, shore and wetland areas.

The purpose and intent of the EFD District is to provide for the continued use of improved properties that lie within the floodplain and which are otherwise considered prohibited structures and to regulate them in accordance with sound floodplain management practices. It is further the intent of these provisions to regulate and diminish the proliferation of non-conforming structures and uses in floodplain areas and to regulate said reconstruction, remodeling, conversion and repair with the overall intent of lessening the public responsibilities attendant to the continued and expanded development of land and structures which are inherently incompatible with natural floodplains and to lessen the potential danger

to life, safety, health and welfare of persons whose lands are subject to the hazards of floods. As conditioned, the approval of this request will be within the purpose and intent of the Ordinance.

When a floodplain variance is granted, the Ordinance requires that the Board of Adjustment notify the applicant, in writing, that it may increase flood insurance premiums and risks to life and property. If the Board grants any of the variances requested, the petitioner shall consider this staff report and recommendation such written notification.

BA09:010 SCOTT AND DIANE STACEY (OWNERS) DAVID HOFFMAN (AGENT):

Mr. Day

I make a motion to adjourn the public hearing to the May 13, 2009, Board of Adjustment Meeting to allow the petitioner to submit a revised building plan and to allow the Planning and Zoning Division staff to formally review it. The revised building plan shall be submitted to the staff at least two weeks prior to the May 13, 2009, meeting. The Board would also like clarification on the existing and proposed square footages and more detail on the cost estimate of the proposed project.

The motion was seconded by Ms. Bonniwell and carried with four yes votes, Mr. Dwyer voted no.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the floor area ratio and remodeling a non-conforming structure in excess of 50% of its fair market value requirements as well as **denial** of the request for a special exception from the offset requirements of the Ordinance for the following reasons:

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The applicant has failed to demonstrate, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The property is currently being used for residential purposes. A previous owner was granted variances in 1992 to significantly expand the cottage that previously existed on the property. The variances were granted to bring the size of the residence in compliance with the minimum house size requirements of the Ordinance. The Board, at the time, stated that the approval of the variances would result in a reasonable use of the non-conforming lot. It should be noted that in 1993 variances were granted to allow the construction of a new residence on the similarly sized adjacent lot to the west of the subject property. The variances allowed the construction of a residence with 864 sq. ft. on the first floor, 643 sq. ft.

on the second floor and a 672 sq. ft. attached garage. To allow an expansion to the existing residence on the subject property would not be in keeping with the characteristic of the neighborhood.

Although the proposed addition will be located no closer to the side lot lines than the existing residence, it will nearly double the size of the structure and will drastically increase the bulk and height of the residence that is already located too close to the side lot lines. The petitioner has stated that variances should be granted because a house in 2008 requires more than two bedrooms; however, the law requires that the Board analyze a variance request based on the physical limitations of the property and not the personal circumstances or desires of the property owner. Furthermore, the building sketch submitted by the applicant indicates that the residence currently has two bedrooms on the first floor and a master bedroom in the upper level.

The petitioner has also indicated that the proposed modifications to the structure will only exceed the floor area ratio requirement by a few percent and are within reason of the stipulations per hook up to city sewer. However, the current allowable floor area ratio is 15%, if the property were served by city sewer, the maximum allowable floor area ratio would increase to 19.5%. The applicant is proposing to increase the floor area ratio on the property to 28.4%. This would greatly exceed the floor area ratio requirements even if the property were served by sewer.

The property is currently being used for a permitted purpose and the denial of the requested variances would not be unnecessarily burdensome on the property owner. The approval of this request would not be within the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA06:056 DAWN OLSON KNAPP:

Mr. Day *I make a motion to **grant** the extension, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes, Ms. Bonniwell voted no.

The Planning and Zoning Division staff's recommendation was to **grant** the extension for a period of 6 months (August 10, 2009).

The reasons for the recommendation, as stated in the Staff Report, are as follows:

If a new variance were required, rather than granting this extension, it is highly likely that the variances would be approved per the original decision as the Ordinance has not changed

with respect to this request since the original decision. Therefore, allowing this extension would be within the purpose and intent of the Ordinance and of the original decision of the Board.

The applicant should be made aware, however, that once the Zoning Permit is obtained, he has 18 months to complete the garage construction. Therefore, it does not seem appropriate to grant any additional extensions beyond this one.

ADJOURNMENT:

Mr. Day *I make a motion to adjourn this meeting at 9:09 p.m.*

The motion was seconded by Mr. Schuett and carried unanimously.

Respectfully submitted,

Nancy M. Bonniwell
Secretary, Board of Adjustment